Supreme Court, U.S.
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No. 92-1405

In the Supreme Court of the United States

OCTOBER TERM, 1992

ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Petitioners,

v.

KATHERINE M. FIELD, CURT HAEDKE, LILLY HOBBY, WILLIAM IOLONARDI, JOANNE IOLONARDI, ROBERT RIFKIN, individually, and as Members of the Board of Directors of 16 Lake Street Owners, Inc., HALE APARTMENTS, DESISTO MANAGEMENT, INC., 16 LAKE STREET OWNERS, INC., ROGER ESPOSITO, individually, and as an officer of 16 Lake Street Owners, Inc.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Court of Appeals properly sustain the imposition of attorneys' fees by the District Court as a sanction pursuant to the inherent power of the District Court to sanction Petitioners for their extraordinary, vexatious and oppressive conduct during the course of the litigation?

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STATEMENT OF THE CASE

This Petition seeks review of the decision by the Court of Appeals for the Second Circuit which sustained the imposition of attorneys' fees by the District Court as a sanction pursuant to the inherent power of the District Court to sanction petitioners for their extraordinary, vexatious and oppressive conduct during the course of the litigation. The issues emanating from this Petition do not involve the Fair Housing Act or the Civil Rights Act, but these issues do involve the ability of the court to impose sanctions for conduct which abuses the judicial process.

Underlying Matter

The underlying action arose from the refusal of the board of directors of a cooperative housing corporation to approve the sale of an apartment owned by John McFadden ("McFadden") to Elena Ruth Sassower ("Elena"), Doris L. Sassower ("Doris"), and Joseph Karmel.[1]

District Court Proceedings

In August 1988, following the disapproval of the sale, Elena, Doris and McFadden, filed suit in the District Court for the Southern District of New York alleging violations of the Federal Fair Housing Act, 42 U.S.C. §§ 3601-3631; the Federal Civil Rights Act, 42 U.S.C. § 1983; New York Human Rights Law, N.Y. Exec. Law § 296(5)(a); New York Civil Rights Law, N.Y. Civ. Rights Law § 19-a; and other state law

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[1] Joseph Karmel, the son-in-law of Doris L. Sassower, had not been named as a party to the action.

claims. Defendants included the cooperative housing corporation and the individually named members of its board of directors (hereinafter collectively referred to as "the Co-Op"), the Co-Op's managing agent (DeSisto Management, Inc., hereinafter referred to as "DeSisto"), the Co-Op's attorney and the former attorney for McFadden (Roger Esposito, hereinafter referred to as "Esposito"), and the former owner of the Co-Op's building and sponsor of the plan which converted the building from rental to cooperative ownership (Hale Apartments, hereinafter referred to as "Hale"). The plaintiffs alleged that the defendants discriminated against them by rejecting the purchase application on the basis of the status of Elena and Doris as single, Jewish women.

In May 1990 McFadden, who, according to his current counsel, was coerced by Elena and Doris to join as plaintiff (CA-46, n. 20),[2] moved to be allowed to withdraw from the action. McFadden's motion was granted on June 14, 1990 and McFadden was dropped as a party to the action and his claims against the defendants were discontinued. On August 17, 1990 Elena and Doris filed an amended complaint.

Following the completion of extensive, costly and frequently abusive discovery conducted by Elena and Doris, the District Court granted summary judgment in favor of Hale and DeSisto on September 5, 1990, see *Sassower v. Field*, 752 F.Supp. 1182 (S.D.N.Y. 1990), and Esposito on November 13, 1990, see *Sassower v. Field*, 752 F.Supp. 1190 (S.D.N.Y. 1990). The court concluded that there was no issue of fact

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2 "CA-" stands for the "Certiorari Appendix", which is annexed to the Petition herein.

concerning Hale, DeSisto or Esposito since none of them were involved in the decision making process which resulted in the disapproval of the purchase application. However, the District Court denied the Co-Op's motion for summary judgment because there were factual issues concerning the reasons for the disapproval of the purchase application which could only be resolved by a jury.

On March 19, 1991, after a seven day jury trial, a jury verdict in favor of the Co-Op was rendered. The jury answered specific interrogatories, rejecting all of the plaintiffs' claims,[3] including the claim that the religion, gender, or marital status of Elena and Doris was a reason for the rejection of their application to purchase the apartment. On March 22, 1991 judgment was entered formally dismissing the amended complaint against all the defendants.

On April 5, 1991 the plaintiffs filed a motion in the District Court for recusal and a new trial. This motion was denied on May 16, 1991. On June 4, 1991 plaintiffs filed another motion in the District Court for reargument of their prior motion for recusal and a new trial. The District Court refused to entertain this second motion since it consisted of reargruments of prior applications which had already been reargued.

Thereafter, the plaintiffs filed a notice of appeal dated June 17, 1991 which covered the judgment dismissing their complaint, the orders of the District Court denying their motions for recusal and a new

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[3] As used hereinafter, the word "plaintiffs" refers only to Elena Ruth Sassower and Doris L. Sassower.

trial and reargument thereof, and each and every part of the judgment, including all intermediate and post-judgment orders of the District Court. This appeal[4] was dismissed on August 27, 1991 as a result of the plaintiffs' failure to comply with the requirements of a previously entered scheduling order.[5]

Sanctions Imposed by the District Court

After entry of judgment dismissing the amended complaint, each of the defendants made a separate written motion for attorneys' fees, costs and sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, the Federal Fair Housing Act, 42 U.S.C. § 3613(c), and 28 U.S.C. § 1927. Several months later the plaintiffs filed a lengthy motion for sanctions and attorneys' fees against the defendants, defendants' counsel, and State Farm Insurance Company,[6] and for a new trial under Fed. R. Civ. P. 60(b)(3). It is interesting to note that among the grounds set forth by plaintiffs as authority for the imposition of sanctions and attorneys' fees against the defendants is *"the*

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4 U.S. Court of Appeals Docket No. 91-7601.

5 This was the third notice of appeal filed by the plaintiffs in connection with the underlying action. The plaintiffs had previously filed two improper interlocutory appeals which had been subsequently withdrawn.

6 State Farm Fire and Casualty Company has provided a defense for each of the defendants, except defendant Hale Apartments. Hale Apartments is not covered by insurance and has been and still is paying for its own legal costs and expenses out of its own pocket.

inherent powers of this Court". [7] In support of this motion and in opposition to the motions made by each of the defendants which were still pending, plaintiffs submitted five separate affirmations, a supplemental memorandum of law which supplemented an opposing memorandum of law previously filed, and three separate compendia of exhibits.

On August 12, 1991 the District Court granted the defendants' respective motions for attorneys' fees and costs as prevailing parties pursuant to the Fair Housing Act, 42 U.S.C. § 3613(c)(2) (1988) (CA-28-55). [8] The defendants were awarded a total of $92,000 for attorneys' fees and $1,350 for costs. These amounts represented only a portion of the actual fees and costs incurred by the defendants in connection with the defense of this lawsuit.[9]

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7 Plaintiffs' notice of motion for sanctions, counsel fees and for a new trial under Fed. R. Civ. P. 60, dated July 1, 1991.

8 *Sassower v. Field*, 138 F.R.D. 369 (S.D.N.Y. 1991).

9 In August 1988, when the original complaint in this case was filed, the Fair Housing Act authorized an award of attorney's fees only to a prevailing plaintiff. However, on September 13, 1988, the act was amended to authorize attorney's fees and costs to a prevailing party. 42 U.S.C. § 3613(c)(2) (1988). The District Court chose to award only those fees and costs incurred after March 10, 1989, the effective date of the amendment. The Court of Appeals subsequently recognized that the selection of this date as a starting point for fees and costs operated "as a fortuitous benefit for the plaintiffs" (CA-18).

In the alternative the Court imposed sanctions against the plaintiffs totaling $92,000 pursuant to Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1927 (1988), and, as a further alternative, pursuant to the Court's inherent power "because of their tactics of delay, oppression and harassment" (CA-9).

In addition, Eli Vigliano, the former attorney of Doris, was sanctioned $1,500 pursuant to 28 U.S.C. § 1927 for his shocking and abusive conduct during the deposition of two of the defendants (CA-44-45, 52). McFadden and his attorney, who were found to be in violation of Rule 11 with respect to their suing DeSisto and Esposito, were assessed Rule 11 sanctions, jointly and severally, in the amount of $3,000 to be paid to DeSisto and $3,000 to be paid to Esposito (CA-46-50, 53).[10]

Finally, the Court denied in its entirety the plaintiffs' motion for sanctions, attorneys' fees and a new trial under Fed. R. Civ. P. 60(b)(3). The Court observed:

> Plaintiffs' motion attempts to reargue for the third time all of the previous discovery and substantive rulings adverse to plaintiffs, as well as their request for a new trial which had already been made and denied by decision dated May 16, 1991. * * * * The plaintiffs claim they have documentary evidence demonstrat-

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[10] By memorandum decision dated September 24, 1991, the District Court modified its order sanctioning McFadden and his attorney by relieving McFadden's attorney from his obligation to pay monetary sanctions and by reducing in half the sanctions payable by McFadden.

ing the fraud, perjury and chicanery of opposing counsel which constitutes fraud under Rule 60(b)(3). They do cite to many documents but these documents are mostly their own earlier affidavits and memorandum of law. (The plaintiffs' arguments do not improve by repetition.) * * * * (CA-53-54)

Court of Appeals Proceedings

Following the entry of the supplemental judgment which imposed sanctions upon the plaintiffs and denied plaintiffs' motion for sanctions, attorneys' fees and a new trial, the plaintiffs filed a notice of appeal dated September 12, 1991 which was limited to the supplemental judgment.[11]

Upon review (CA-6-19),[12] the Court of Appeals found that the sanctions imposed by the District Court could not be awarded under the Fair Housing Act (CA-12-14). However, the Court of Appeals went on to hold that the sanctions awarded under Rule 11 of the Federal Rules of Civil Procedure (CA-14) and the sanctions awarded under 28 U.S.C. § 1927 (CA-14-16),[13] were each equally supportable by the exercise of the District Court's inherent authority (CA-16-17).

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11 U.S. Court of Appeals Docket No. 91-7891.

12 *Sassower v. Field*, 973 F.2d 75 (2nd Cir. 1992).

13 The Court of Appeals held that although 28 U.S.C. § 1927 will not support sanctions against Elena Ruth Sassower, it is available for use against Doris L. Sassower (CA-16).

The Court of Appeals recognized that the central issue before it did not concern the Fair Housing Act, but it did concern the manner in which the plaintiffs conducted the litigation (CA-14). In resolving this issue the Court of Appeals held that the District Court was "abundantly justified in imposing sanctions against both plaintiffs and that the amount imposed upon Doris was fairly determined, but that the amount of the sanction imposed on Elena must be reconsidered in light of her limited financial resources" (CA-8).

The Court of Appeals also upheld the denial of the plaintiffs' motion for sanctions, attorneys' fees and a new trial under Rule 60(b)(3). The Court of Appeals observed that "[i]n the main, the motion is nothing more than a reargument of numerous claims made prior to and during the trial, including factual issues resolved against the plaintiffs by the jury" (CA-18).

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

The issue presented by the instant petition was recently decided by the Supreme Court in *Chambers v. NASCO, Inc.*, 111 S.Ct. 2123 (1991). The holding in *Chambers*, that a district court may properly invoke its inherent power in assessing attorneys' fees as a sanction for oppressive, vexatious and bad-faith conduct, is clear and unequivocal. Besides the Second Circuit, other Courts of Appeals have been following *Chambers* in upholding sanctions for bad-faith conduct. *See, e.g., Western Systems v. Ulloa*, 958 F.2d 864 (9th Cir. 1992); *Matter of Case*, 937 F.2d 1014 (5th Cir. 1991).

Moreover, the petitioners have failed to show any of the reasons set forth in Supreme Court Rules 10.1(a) and 10.1(c) which justify the granting of this petition. There is no conflict between the Courts of Appeals or any other basis for further review by this Court.

SUMMARY OF ARGUMENT

The petitioners' conduct during the course of the litigation was extraordinary, vexatious and oppressive. Consequently, the District Court was abundantly justified in imposing sanctions for such conduct and the Court of Appeals properly upheld the District Court's imposition of sanctions pursuant to its inherent power. *Chambers v. Nasco, Inc., supra.*

ARGUMENT

POINT I

THE COURT OF APPEALS PROPERLY SUSTAINED THE IMPOSITION OF ATTORNEYS' FEES BY THE DISTRICT COURT AS A SANCTION PURSUANT TO THE INHERENT POWER OF THE DISTRICT COURT TO SANCTION PETITIONERS FOR THEIR EXTRAORDINARY, VEXATIOUS AND OPPRESSIVE CONDUCT DURING THE COURSE OF THE LITIGATION.

This Court has made it abundantly clear that a district court has the inherent authority to sanction parties appearing before it for acting in bad-faith, vexatiously, wantonly, or for oppressive reasons. *Chambers, supra,* at 2133.

In the case at bar, the District Court ruled that the plaintiffs managed the proceedings "in a fashion that vexatiously, wantonly and for oppressive reasons, increased the legal fees enormously" (CA-37). A similar observation was made by the Magistrate Judge when he found that Doris Sassower demonstrated an "egregious failure to make discovery as directed by the court" (CA-39). The Court also observed that the plaintiffs made several unsupported bias recusal motions (CA-37) and they continually made personal attacks on opposing parties and counsel[14] (CA-37). The Court opined that the

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14 In this regard, the Court went so far as to quote from Doris Sassower's deposition transcript to demonstrate her vexatious conduct during the proceeding (CA-37).

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plaintiffs' "view of any factual dispute has been, all along, that their claims are to be acknowledged without dispute and the contrary evidence of the defendants is to be rejected as fraud and perjury" (CA-54).

Moreover, the District Court further observed that the plaintiffs routinely made motions to reargue all rulings which were adverse to them, filed two improper interlocutory appeals and attempted to "communicate directly with the defendants rather than through counsel in order to force through their settlement demands" (CA-37-38).

The Court of Appeals, after thoroughly reviewing the record of the proceedings before the District Court, held that the District Court was "abundantly justified in imposing sanctions against both plaintiffs" (CA-8). The Court of Appeals specifically agreed with the assessment of the District Court that "The Sassowers pursued this litigation as if it was a holy war and not a court proceeding. . ." (CA-10).

The plaintiffs' conduct during the course of the district court proceedings justified the imposition of attorneys' fees as sanctions under *Chambers*. This conclusion was reached by both the District Court (CA-46, 51) and the Court of Appeals (CA-17). In *Chambers*, this Court held that the district court "properly invoked its inherent power in assessing as a sanction for a party's bad-faith conduct attorneys' fees and related expenses paid by the party's opponent to its attorneys." *Id.*, at 2128. After pointing out the difficulty in applying the express statutory sanctioning provisions, the Court recognized that:

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> In circumstances * * * in which all of a litigant's conduct is deemed sanctionable, requiring a court first to apply rules and statutes containing sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct, would serve only to foster extensive and needless satellite litigation, which is contrary to the aim of the rules themselves. (Citations omitted).

Id., at 2136.

In this case, the Court of Appeals adopted the same reasoning used in *Chambers*, when it held that the awards under Rule 11 and 28 U.S.C. § 1927 were equally supportable by the exercise of the District Court's inherent authority.

It should also be noted that the concerns expressed by the dissenting opinions in *Chambers* are not applicable to the facts in this case.

Justice Scalia, in his dissenting opinion, recognized the right of the district court to use its inherent power to impose sanctions. However, he disagreed with the majority's extension of this right to reach conduct beyond the confines of the litigation before the district court. In this case, all of the sanctioned conduct was within the confines of the litigation. Therefore, Justice Scalia's concern would be inapplicable to this case.

Justice Kennedy, in his dissenting opinion, recognized that the district court has the right to use its inherent power to impose sanctions for bad-faith

conduct, provided there is no rule or statutory basis for the imposition of sanctions and that the sanctions are not imposed for pre-litigation conduct. Unlike the district court in *Chambers*, the district court here used express sanctioning provisions provided by Congress. However, the Court of Appeals upon review found that attorneys' fees could not be awarded under the Fair Housing Act, 42 U.S.C. § 3613, and the sanctions awarded under Rule 11 and 28 U.S.C. § 1927 were equally supportable by the exercise of the district court's inherent authority.

Finally, there is absolutely no merit to plaintiffs' unsubstantiated allegations of lack of due process. The plaintiffs had clear and timely notice that attorneys' fees, costs and sanctions for their extraordinary, vexatious and oppressive conduct were being sought. The sanctions imposed were the result of fully litigated motions on notice made by the defendants concerning the manner in which the plaintiffs conducted the litigation. The plaintiffs were afforded the opportunity to submit opposing affidavits, supporting exhibits and briefs. In fact, the plaintiffs not only availed themselves of this opportunity, they also moved for sanctions against the defendants and for relief under Fed. R. Civ. P. 60(b)(3) (CA-18; CA-53). In addition, all sanctioned conduct was within the proceedings of the District Court. Consequently, the necessary facts upon which the sanctions award was predicated were part of the District Court record, thus obviating the need for a hearing.

In conclusion, the Court of Appeals properly sustained the imposition of attorneys' fees as a sanction pursuant to the District Court's inherent power.

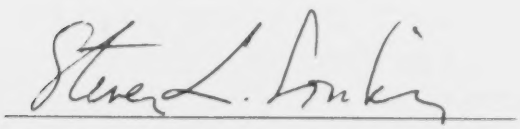
CONCLUSION

For the reasons set forth above, the respondents herein submit that a Writ of Certiorari should be denied in this case.

Dated: New York, New York
March 22, 1993

Respectfully submitted,

MARSHALL, CONWAY & WRIGHT, P.C.



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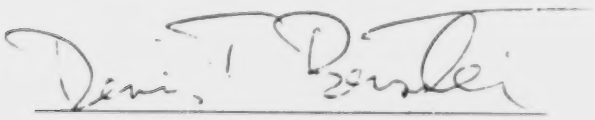

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